IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1127 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DALWADI V BHIKHA - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR GAURANG H BHATT for Petitioner(s) : 1,
MR PRADIP BGHATE ASST GOVERNMENT PLEADER for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 01/09/2005

ORAL JUDGMENT

1. At the outset, it requires to be noted that this petition is an example to show how the judicial process is misused by the litigant.

2. In this petition under Article 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Assistant Collector, Dhangadhra dated 31.3.1982 passed in Revision Application No.41 of 1981-82 declaring Acres 20 – 36 gunthas land as the surplus land under the provisions of the Gujarat Agricultural Lands Ceiling Act, 1960 (hereinafter referred to as the "Act" for short) as well as the order passed by the Gujarat Revenue Tribunal dated 22.9.1983 in dismissing the Revision Application No.TEN.BA.1178 of 1982 by which the said revision application was dismissed for default and the petitioner has also challenged the order passed by the Gujarat Revenue Tribunal, Ahmedabad dated 16.1.1987 passed in restoration application No.134 of 1986 in revision application No.1178 of 1982.

3. Few facts of the present special civil application need to be discussed for determination of the present special civil application which are as under :

4. Proceedings under the provisions of Gujarat Agricultural Lands Ceiling Act, 1960 (hereinafter referred to as the “Act” for short) came to be initiated before the Mamlatdar and Alt, Halvad being Ceiling Case No.322 of 1976-77. By order dated 13.5.1977 the Mamlatdar and ALT, Halvad declared that the petitioner is not holding any surplus / excess land. The aforesaid order of Mamlatdar and ALT dated 13.5.77 was taken under suo motu review by the Deputy Collector, Dhangadhra by way of Revision No.259/77 and the Deputy Collector, Dhangadhra by order dated 16.5.77 set aside the order passed by the Mamlatdar and ALT, Halvad dated 13.5.77 and remanded the matter to the Mamlatdar & ALT, Halvad for deciding the same afresh. On remand the Mamlatdar & ALT again by order dated 9.6.80 held that the petitioner is not holding any surplus land. The said order of Mamlatdar & ALT dated 9.6.80 came under suo motu revision by Deputy Collector, Dhangadhra being Revision Application No.135 of 1980 and the Deputy Collector, Dhangadhra by its order dated 8.5.1981 set aside the order passed by the Mamlatdar and Alt dated 9.6.1980 and remanded the matter to the Mamlatdar and ALT for

deciding the same afresh. On remand again, the Mamlatdar & ALT, Halvad by order dated 26.2.82 held that the petitioner is not holding any surplus land. The said order of Mamlatdar and ALT, Halvad dated 26.2.82 came to be taken under suo motu revision by the Assistant Collector, Dhangadhra by way of Revision Application No.41 of 1981-82 and the Assistant Collector, Dhangadhra by its order dated 31.3.1982 set aside the order passed by the Mamlatdar and ALT dated 26.2.1982 and declared Acres 20 – 36 Gunthas of land as surplus lands from the holding of the petitioner and passed the order vesting the said land in Government. Being aggrieved and dissatisfied with the order passed by the Assistant Collector, Dhangadhra dated 31.3.1982 passed in Revision Application No.41 of 1981-82, the petitioner preferred revision application before the Gujarat Revenue Tribunal being Revision Application No.TENB.A. NO.1178 of 1982 and the said revision application came to be dismissed for default by order dated 22.9.9.1983 as nobody remained present on behalf of the petitioner before the Gujarat Revenue Tribunal. Thereafter, on dismissal of the aforesaid

revision application by Gujarat Revenue Tribunal, the Assistant Collector on the basis of his earlier order dated 31.3.1982 declared 20 acres and 36 gunthas as surplus land initiated the inquiry for the purpose of selection of the lands under Section-21 of the Act, in which, the petitioner as well as his brother participated and the Assistant Collector by his order dated 4.4.1984 passed the order on the basis of the selection made by the petitioner as well as the respondent No.2. Being aggrieved and dissatisfied with the order passed by the Assistant Collector, Dhangadhra dated 4.4.1984 with regard to selection of the land on the basis of the earlier order passed by the Assistant Collector, Dhangadhra dated 31.3.1982 declaring 20 acres and 36 gunthas as surplus land, the petitioner as well as the respondent No.2 preferred an appeal before the Deputy Collector being Ceiling Appeal No.3 of 1984-85 and the Deputy Collector by its order dated 29.8.1984 dismissed the said appeal confirming the order passed by the Assistant Collector, Dhangadhra dated 4.4.84. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Dhangadhra dated

29.8.1984 passed in Ceiling Appeal No.3 / 1984-85 the petitioner as well as the respondent Nos.2 & 3 preferred Revision Application before the Gujarat Revenue Tribunal being Revision Application NO.1169 of 1984 and the Gujarat Revenue Tribunal by its judgment and order dated 9.1.1987 dismissed the said revision application. At this stage, it is required to be noted that the said order passed by the Gujarat Revenue Tribunal dated 9.1.1987 passed in Revision Application No.1169 of 1984 has not been challenged by the petitioner as well as respondent No.2 & 3 and the said judgment and order has become final. The matter does not end here. Having realized that Revision Application No.1169 of 1984 is likely to fail, the petitioner filed restoration application on 29.10.1986 for setting aside the order dated 22.9.1983 in Revision Application TEN.BA NO.1178 of 1982 by which the revision application was dismissed for default and the said application was after the period of three years of 22.9.83 and the Gujarat Revenue Tribunal by its order dated 16.1.1987 dismissed the restoration application No.134 of 1986. Having failed in getting the revision application

restored, new inning was started by the respondent No.2 – brother of the petitioner who had earlier lost upto Gujarat Revenue Tribunal by way of Revision Application No.1169 of 1984 and the respondent No.2 challenged the original order passed by the Assistant Collector, Dhangadhra dated 31.3.1982 passed in Revision Application No.41 of 1981-82 by which land admeasuring 20 acres and 36 gunthas came to be declared as surplus land which was challenged by the petitioner by way of Revision Application before the Gujarat Revenue Tribunal in Revision Application No.1178 of 1982, which came to be dismissed for default for which even restoration application came to be dismissed on 16.1.1987, by way of Revision Application No.TEN.BA NO.139 of 1987 and the said Revision Application also came to be dismissed by Gujarat Revenue Tribunal by its judgment and order dated 14.9.90 confirming the order passed by the Assistant Collector dated 31.3.1982. Having realised that the petitioner and the respondent Nos.2 & 3 have failed everywhere, the present special civil application is filed by the petitioner joining the respondent No.2 – brother as the party respondents on

21.2.1991 challenging the original order passed by the Asstt. Collector, Dhangadhra dated 31.3.1982 passed in Revision Application No.41 of 81-82, order passed by the Gujarat Revenue Tribunal dated 22.9.83 passed in Revision Application TEN.BA No.1178 of 1982 and the order passed by the Gujarat Revenue Tribunal dated 16.1.1987 passed in Restoration Application No.134 of 1986.

5. It is required to be noted at this stage that the present special civil application came to be filed after a period of almost four years and even the last order which is challenged by the present petitioner i.e. Order passed by the Gujarat Revenue Tribunal is dated 16.1.1987 and there is no explanation whatsoever by the petitioner challenging the said order by way of present special civil application after period of four years. It appears from the chronological events that at every point of time, the petitioner and the respondent Nos.2 & 3 have taken chance. There is a reason for not challenging the order passed by the Gujarat Revenue Tribunal dated 16.1.1987 at earlier point of time

also as it appears the order passed by the Assistant Collector, Dhangadhra dated 31.3.1982 came to be challenged by the respondent No.2 – brother of the petitioner before the Gujarat Revenue Tribunal by way of Revision Application TEN.BA.No.139 of 1987 and that Revision Application was filed after the order dated 16.1.1987 passed in Restoration Application NO.134 of 1986 and the petitioner waited till the outcome of the Revision Application No.TEN.BA.136 of 1987 filed by the respondent No.2 herein – brother of the petitioner and only on dismissal of the aforesaid Revision Application No.TEN.BA.139 of 1987 dated 14.9.1990, the petitioner has preferred present special civil application on 21.2.1991. The aforesaid facts clearly show the misuse of legal process and proceedings by the petitioner as well as the respondent Nos.2 & 3 which naturally disentitles the petitioner for any relief in the present special civil application under Articles 226 and 227 of the Constitution of India.

6. Under the circumstances and in view of the fact that the order of the year 1987 has been challenged

by the petitioner in the year 1991 without explaining any delay and in view of the aforesaid facts, the present special civil application is required to be dismissed and is accordingly dismissed.

7. Rule is discharged. Ad-interim relief, if any, stands vacated forthwith. However, there will be no order as to costs.

[M.R.Shah, J.]

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